THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.9896 of 2003

18.11.2006

Between:

Md.Zulfekhar

..Petitioner

And

The Government of Andhra Pradesh, rep., by its Secretary, Co-operatives Secretariat, Hyderabad. and others

..Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.9896 of 2003

ORDER:

It appears, the petitioner is one of the partners of a firm, established in the name and style of "M/s. Classic Foam Industries". The firm obtained a loan of Rs.21,00,000/-, from the 3rd respondent bank by mortgaging a house bearing No.1-4-905 & 906, Bakaram, Musheerabad, Hyderabad, for development of the business. However, the firm ran into losses, and therefore, it was not able to pay the instalments regularly. Hence, the 3rd respondent bank issued recovery proceedings and an award is also passed under the provisions of the Andhra Pradesh Co-operative Societies Act (for short "the Act"). Subsequently, as the amounts were not paid, the Public Auction-cum-Sale Notice was again issued on 16.04.2003, notifying that the property in question would be auctioned on 05.05.2003. In view of the fresh notice, the earlier writ petition filed by the firm had become infructuous. Pursuant to this notice, the auction was conducted on 05.05.2003, at 11 a.m., and since no bidder was present, the auction was postponed. As per the rules, once the auction is postponed, a fresh notice must be issued again. But, in this case, the auction was conducted again on 10.05.2003 and as no bidder was present, the 3rd respondent bank informed that the property was purchased by the bank itself for Rs.87,00,000/- approximately.

Learned counsel for the petitioner states that initiation of E.P., proceedings and the issuance of auction notice, are without jurisdiction. The 3rd respondent bank has been registered under the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 (for short "the Societies Act"). The Societies Act came into force with effect from 01.06.1995, and therefore, the provisions of the Act are to be made application. Section 36 of the Societies Act reads as under:

> *Section 36. Execution of decisions, decrees and orders:- In regard to execution of decisions, decrees and orders, all the provisions of Chapter X of the Andhra Pradesh Co-operative Societies Act, 1964 shall mutates mutandis apply to Co-operative Societies registered under this Act, such however, that all references to the Registrar in the said Act shall be construed to be a reference to the Co-operative Tribunal in their application to Co-operative Societies registered under this Act."*

A plain reading of Section 36 of the Societies Act itself would show that the Registrar under Section 10 of the Act shall be construed as Co-operative Tribunal and though the sale certificate was given earlier to coming into force of the Societies Act, the sale has to be conducted only as required under the provisions of Section 36 of the Societies Act, and the respondents cannot invoke Rule 52 of the Act, for a society, registered under the Societies Act.

In view of the above, the impugned notice is liable to be set aside, and the same is accordingly set aside. However, this will not preclude the respondents from working out their remedies, as available under Section 36 of the Societies Act.

The Writ Petition is accordingly allowed. There shall be no order as to costs.

_____

(C.V.RAMULU, J)

18.11.2006

GJ